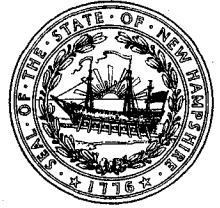




The State of New Hampshire
Department of Environmental Services
Waste Management Council

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STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL

Docket No. 05-20 WMC

Appeal of Dr. Rae Barnhisel
In Re: Groundwater Management Permit No. 199103027-T-001

Decision & Order
Motion to Dismiss

Background

On November 7, 2005 the New Hampshire Department of Environmental Services, Waste Management Division ("DES") issued Groundwater Management Permit No. 199103027-T-001 to the Town of Temple ("the Applicant").

On November 22, 2005 Dr. Rae Barnhisel ("the Appellant") filed a Notice of Appeal ("the Appeal") with the NH Waste Management Council ("the Council") on her own behalf. The subject of the Appeal was the DES decision to issue Groundwater Management Permit No. 199103027-T-001. The Appeal was timely filed but it did not comply with several requirements of Env-WMC 204.02(b). Per Env-WMC 204.03(d)(1)b, in order for the Council to accept the Appeal, the Appellant was required to file a corrected Notice of Appeal with the Council on or before December 21, 2005.

On December 21, 2005 the Appellant filed a corrected Notice of Appeal with the Council.

On January 26, 2006 the Council voted to accept the Notice of Appeal, and an appeal Hearing was scheduled for March 16, 2006.

On February 23, 2006 Attorney Anthony I. Blenkinsop filed an Appearance on behalf of DES.

On March 6, 2006 Attorney Biron Bedard filed an Appearance, a Motion to Intervene, and a Motion to Continue the Appeal on behalf of the Applicant.

On March 9, 2006 the Appellant filed an Objection to the Motion to Continue.

On March 9, 2006 the Council granted the Motion to Continue and the appeal hearing in this matter was rescheduled to Thursday, April 20, 2006 at 10:00am in Rooms 112-114 of the offices of the Department of Environmental Services (“DES”), 29 Hazen Drive, Concord, NH.

On April 20, 2005, following proper notice to all parties, the Council convened an adjudicatory hearing on the subject appeal in accordance with RSA 541-A:31-38 and the Waste Management Council’s procedural rules, NH CODE ADMIN. RULES Env-Wm 200. During the hearing the Appellant was allowed an unlimited amount of time to present her case to the Council. During presentation the Appellant did not call any witnesses but instead offered direct testimony. The Council listened to testimony and argument by the Appellant. DES and the Applicant were allowed an opportunity to cross examine the Appellant. After the Appellant concluded her case the Applicant made an oral motion to dismiss (“the motion”). The Applicant argued that the Appellant failed to meet her burden of proving, by a preponderance of the evidence, that the decision being appealed was either unlawful or arbitrary and capricious. The Applicant also argued that the Appellant failed to demonstrate standing in that she failed to demonstrate that she does or will suffer a negative direct affectation as a result of the DES decision on appeal. DES joined in support of the motion. The Council then deliberated the merits of the motion at length, and by a vote of 8-1 granted the motion.

Findings and Conclusions

The Council finds that for a party to bring an appeal before the Council, the petitioning party must demonstrate a proper standing in order to bring about the proceeding. That is to say the burden is upon the petitioning party to show direct affectation to the petitioner as a result of a decision of DES. The subsequent burden is then to show that the decision being appealed is in some way unlawful or unreasonable. A party is not presumed to have standing in issues which

only a generalized harm to the public is the primary basis to allege standing. (See Appeal of Richards, 134 N.H. 148 (1991). The Council finds and concludes that the Appellant failed to meet the necessary burden of proof that she suffers or will suffer any direct affection or particular harm as a result of the DES decision on appeal.

The Council finds that per Env-WMC 205.14 the Appellant bears the burden of proving, by a preponderance of the evidence, that the decision being appealed was contrary to case law, statute, or ruled; or arbitrary and capricious. The Council finds and concludes that based upon a preponderance of the evidence offered by the Appellant in this case, the Appellant failed to meet this burden.

Order

Motion to Dismiss is **GRANTED**.

Reconsideration

Pursuant to Env-WMC 205.16 any party whose rights are directly and adversely affected by this decision may file a motion for rehearing with the NH Waste Management Council within 20 days of the date the written decision is issued.

So Ordered for the Council by:

COPY
Michael P. Selman, Appeals Clerk

May 12, 2006